

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by New York Telephone)
Company (d/b/a Bell Atlantic -)
New York), Bell Atlantic)
Communications, Inc., NYNEX Long)
Distance Company, and Bell Atlantic)
Global Networks, Inc., for)
Authorization To Provide In-Region,)
InterLATA Services in New York)

Docket No. 99-295

COMMENTS OF MCI WORLDCOM, INC.

APPENDIX VOLUME II

Declaration of Annette Guariglia

Joint Declaration of George S. Ford and John D. Jackson

Declaration of Karen A. Kinard

Joint Declaration of John G. Donoghue and Ronald J. McMurtrie

Declaration of Robert A. Mercer

Joint Declaration of T. Randolph Beard and John W. Mayo

MCI WORLDCOM, INC. COMMENTS

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of)	
)	
Application by New York Telephone Company)	
(d/b/a Bell Atlantic-New York), Bell Atlantic)	
Communications, Inc., NYNEX Long Distance)	CC Docket No. 99-295
Company, and Bell Atlantic Global Networks, Inc.,)	
for Authorization to Provide In-Region,)	
InterLATA Services in New York)	

**DECLARATION OF ANNETTE S. GUARIGLIA
ON BEHALF OF MCI WORLDCOM, INC.**

Based on my personal knowledge and on information learned in the course of my duties, I, Annette S. Guariglia, declare as follows:

1. My name is Annette S. Guariglia. I am Senior Analyst, Northern Region Local Competition Group, for MCI WorldCom. I am responsible for representing MCI WorldCom in state regulatory proceedings in various states (including New York), performing policy analysis, providing witness support, and participating in Section 252 negotiations and in local competition forums sponsored by state commissions. I testified on behalf of MCI WorldCom at the Checklist Technical Conference held in New York on July 27-30, 1999, and am participating in the Digital Subscriber Line ("DSL") collaborative and DSL pricing proceeding that are ongoing in New York at this time.

2. The purpose of my declaration is to respond to certain claims made by Bell Atlantic-New York ("BA-NY") regarding DSL in the Joint Declaration of Paul A. Lacouture and Arthur J. Troy ("Lacouture/Troy Decl.") (BA-NY App. A, Tab 1), and to demonstrate that the rates, terms and conditions at which BA-NY makes unbundled loops capable of carrying DSL

service available to competitive local exchange carriers ("CLECs") constitute an impediment to wide-scale, meaningful competition in New York.

3. During the past few months, the State of New York Public Service Commission ("NYPSC") has been conducting a DSL collaborative to resolve issues associated with BA-NY's processes for pre-qualifying, ordering and provisioning DSL-capable loops.^{1/} This collaborative is ongoing and, despite the efforts so far, significant problems and issues remain.

4. The NYPSC also recently began an expedited proceeding for reviewing the ancillary non-recurring charges (and one recurring charge for a mechanized database query) proposed by BA-NY in its tariff amendments for DSL-capable loops.^{2/} These ancillary charges apply in addition to the more general non-recurring charges (e.g., service order charges) applicable to those loops.^{3/} A hearing is scheduled in this proceeding for November 3, 1999 and the NYPSC expects to conclude the proceeding before the end of 1999.^{4/}

1/ DSL is an available technology that uses an ordinary existing copper loop to provide high-bandwidth digital transmission capabilities between the end user's premises and BA-NY's central office. DSL technologies provide a variety of bandwidths, in some cases exceeding 7 Mbps in one direction, but more commonly are deployed to provide between 128 Kbps and 1.5 Mbps. In contrast, an analog voice-grade POTS circuit is only able to achieve somewhere close to 56 Kbps (and only then under ideal conditions).

2/ See BA-NY's Proposed Revised NY P.S.C. 916 Tariff (effective Sept. 9, 1999) ("916 Tariff Amendments") (BA-NY App. D, Tab 206). Those amendments introduced rates and regulations for four types of unbundled loops capable of carrying DSL service: ADSL-Qualified Links, two-wire and four-wire HDSL-Qualified Links, and Digital Designed Links.

3/ Only the basic monthly recurring rates for unbundled DSL-capable loops will be examined during the "third module" of the UNE pricing proceeding, which is scheduled for hearing in February 2000.

4/ See Notice Inviting Comments on Non-Recurring Charges for DSL Links, NYPSC, Case 98-C-1357 (Sept. 9, 1999) (attached hereto as Att. 1); Procedural Ruling Concerning DSL Charges, NYPSC, 98-C-1357 (Sept. 30, 1999) (attached hereto as Att. 2).

5. In the meantime, while the DSL collaborative and DSL pricing proceeding are ongoing, BA-NY's DSL offering continues to be discriminatory and anti-competitive for several reasons.

6. First, BA-NY is not offering competitors DSL-capable loops when loops are served by integrated digital loop carrier ("IDLC")^{5/} facilities. See Lacouture/Troy Decl. ¶ 77. Therefore, if the only loops available to a specific customer or customer location are loops served by IDLC,^{6/} CLECs are not able to offer DSL service to that specific customer or customer location.

7. Second, the pre-ordering processes introduced by BA-NY to provide CLECs with loop qualification information are inadequate and significantly delay a CLEC's ability to provide DSL services to its customers. BA-NY currently offers CLECs two tiers of access to loop qualification data. First, CLECs can electronically access a mechanized loop qualification

^{5/} IDLCs are loop feeder systems that concentrate traffic and interface with digital switches on a digital basis. They generally consist of a remote digital terminal, a digital fiber optic transmission facility connecting the remote digital terminal to the switching center, a DS1 patch panel, and an integrated digital terminal which provide the digital interface between the local digital switch and the remote digital terminal.

^{6/} BA-NY maintains a discriminatory policy of downgrading customers served by IDLC to alternate copper pairs or UDLC -- which are inferior to IDLC -- when CLECs obtain these customers' business. Where a suitable copper pair or UDLC does not exist, BA-NY will make these alternate facilities available to a CLEC subject to the CLEC assuming responsibility for their construction costs, which are charged by BA-NY on an individual case basis. See Joint Supplemental Affidavit Update of Donald E. Albert, Julie A. Canny, George S. Dowell, Karen Maguire and Patrick J. Stevens on Behalf of Bell Atlantic-New York, NYPSC, Case 97-C-0271, ¶¶ 26, 28 (June 7, 1999) (BA-NY App. C, Tab 755). Nevertheless, even if alternate facilities are available or are constructed by BA-NY, they may be inadequate for DSL service. Indeed, UDLC is incapable of supporting DSL services, and copper loops of greater than 12,000 feet in length significantly reduce DSL's available bit rate, with some DSL technologies not working at all when the copper loop exceeds 18,000 feet in length.

database specifically designed for BA-NY's limited ADSL/HDSL retail offering. Second, CLECs can request that BA-NY manually research and provide additional loop make-up information.

8. It is very problematic that BA-NY's mechanized loop qualification database only provides loop make-up information on the limited DSL services that BA-NY offers its own retail customers. While it might be extremely helpful to BA-NY's retail operations to have a database containing information restricted to those loops that can support BA-NY retail services, this information is of limited use to CLECs, who have different and broader DSL service requirements.

9. Indeed, BA-NY's mechanized loop qualification database does not provide loop make-up information that is critical for CLEC-specific DSL offerings, which vary substantially from BA-NY's DSL retail offering -- an offering limited to ADSL and HDSL.^{7/} For example, BA-NY's database only contains data about (1) loop length including bridged taps for loops up to 18,000 feet in length, (2) whether or not the loop is loaded (yes or no), and (3) whether or not the loop can support BA-NY's ADSL/HDSL retail offering (yes or no).^{8/} But to

^{7/} ADSL is an "asymmetric" DSL configuration designed to provide a high-bandwidth signal in the downstream direction (up to 1.5 Mbps for loops up to 18,000 feet in length and up to 7 Mbps for loops up to 6,000 feet in length, assuming 2-wire loops of 24-gauge copper) and a lower bandwidth signal in the upstream direction. It is frequently deployed for customers whose primary interest is high-speed Internet access, which involves heavy downstream traffic flows (i.e., downloading web-site pages) and little upstream traffic (i.e., a few keystrokes and occasional uploads of e-mail and data files). High-Bit-Rate DSL, or "HDSL," is a symmetric DSL configuration supporting a data transmission rate of 1.5 Mbps in each direction for loops up to 12,000 feet in length (assuming two 2-wire loops of 24-gauge copper).

^{8/} There are several reasons that a loop may fail to meet BA-NY's technical requirements for its retail ADSL/HDSL offering. For example, in addition to the loop (including bridged taps) being greater than 18,000 feet in length, the loop may require "conditioning" (i.e., the removal of bridged taps and load coils), or may be provided over a digital loop carrier system. The yes/no indicator in the mechanized loop qualification database does not contain any of this detailed

conclusively determine what type of DSL service to provision to a particular end user and how to provision it, CLECs require access to much more detailed loop data, such as (1) the length of the loop without bridged taps,^{9/} (2) the location and number of bridged taps, (3) the loop wire gauge, (4) spectrum management information, and (5) the presence of load coils,^{10/} digital loop carriers, repeaters,^{11/} Digital Added Main Lines (“DAMLs”)^{12/} and pair gain devices.

10. All of this information is critical because each DSL technology has different parameters and its own unique loop requirements. For example, ADSL can only be offered to customers within approximately 18,000 feet of a central office (which is why only information about loops up to that length is included in BA-NY’s database), while SDSL and IDSL can be provisioned on loops of up to 20,000 feet and 26,000 feet in length, respectively.^{13/} IDSL uses

information.

9/ Bridged taps refer to the ILEC practice of configuring the loop plant in such a way that a single wire pair can be used to serve multiple end-user locations (although not simultaneously). DSL technology can be deployed on a loop equipped with bridged taps, so long as the bridged taps are not excessive in length. The total cumulative length of bridged taps on a loop must generally be less than 2,500 feet to support DSL service.

10/ Load coils are devices placed on a copper loop at regular intervals if the loop exceeds a certain length, typically 18,000 feet. Load coils modify the electrical characteristics of a copper loop to overcome the attenuation distortion associated with long loops. No DSL technologies can be deployed on loops equipped with load coils.

11/ Repeaters are used to boost the signal strength to avoid attenuation on long loops. Repeaters must be removed before loops can be used for all DSL services, except IDSL.

12/ BA-NY and other incumbent have recently begun deploying a technology known as DAML, which are devices that are placed in the distribution portion of the loop plan and are used to derive two voice-grade POTS circuits from a single copper pair. The presence of DAMLs precludes use of the loop to support most DSL technologies.

13/ Symmetric DSL, or “SDSL,” supports symmetrical data transmission rates of up to 1.5 Mbps in each direction for loops that do not exceed 20,000 feet in length, assuming 2-wire loops of 24-gauge copper. Integrated DSL, or “IDSL,” supports a data transmission rate of 128 Kbps

the same coding and parameters as ISDN and, therefore, unlike all other forms of DSL which require "clean" copper loops from end-to-end (i.e., no interfering loop equipment such as load coils, repeaters, and digital loop carriers, and minimal bridged taps), IDSL loops can include repeaters and digital loop carrier systems.

11. Thus, a CLEC can only determine the type of DSL service that would be best suited for a particular customer if it has access to all information about that customer's loop. Indeed, if a customer's loop is more than 18,000 feet in length, BA-NY's mechanized loop qualification database won't contain any information about that loop.^{14/} However, there are types of DSL service that a CLEC may be able to provision over a loop longer than 18,000 feet, and the CLEC needs detailed information about the make-up of the loop to provision the appropriate DSL service. The only way the CLEC can access that information is through BA-NY's time-consuming manual processes. This is inadequate because when a customer calls a CLEC to inquire about DSL service, the CLEC needs instant access to all information about the technical make-up of the customer's loop in order to efficiently and rapidly determine the best possible

in each direction on 2-wire loops of up to 26,000 feet in length, assuming loops of 24-gauge copper.

^{14/} BA-NY made a verbal commitment during the DSL collaborative to include all "non-loaded" loops (i.e., no load coils), regardless of length, in the mechanized loop qualification database. MCI WorldCom does not know whether or not this has happened. In any event, this commitment by BA-NY does not add much new information to the database because most loops of greater than 18,000 feet contain load coils and, therefore, are still excluded from the database. The only loops that will be added are those whose length with bridged taps exceeds 18,000 feet (and therefore were formerly not included in the database), but whose length without bridged taps is less than 18,000 feet (and therefore not loaded).

service for the customer. BA-NY's mechanized loop qualification database does not presently meet this critical need.^{15/}

12. Nevertheless, BA-NY requires that CLECs utilize the mechanized loop qualification database in advance of submitting a Local Service Request ("LSR"). See 916 Tariff Amendments, section 5.5.4.1. As a result, every time a CLEC wants to provide DSL service to a customer, it must pay BA-NY a monthly recurring charge of \$0.61 per loop for use of the mechanized loop qualification database,^{16/} even though this database is incomplete, and the CLEC will have to use -- and pay for -- BA-NY's additional manual processes to obtain the critical missing information it requires to provide DSL service to a customer. See id. section 5.5.2.

13. BA-NY essentially has two manual loop qualification processes. First, a CLEC may request that BA-NY conduct a Manual Loop Qualification, which costs \$62.13 per loop. See id. sections 5.5.2, 5.5.4.1. Although this process provides slightly more information than that contained in BA-NY's mechanized loop qualification database, it is also inadequate.

^{15/} BA-NY boasts in its application that by the end of 1999, its mechanized loop qualification database will contain loop information for 93 percent of BA-NY's central offices now with collocation or now subject to pending collocation orders. See BA-NY Application at 21; Lacouture/Troy Decl. ¶ 84. This claim is misleading. The loop information in the database will continue to be tied to BA-NY's DSL retail offering and, therefore, will not contain the critical loop make-up information that CLECs need. Indeed, the New Jersey commission recently recognized this, ordering Bell Atlantic to populate its mechanized loop qualification database by March 31, 2000 with, among other things, the presence of DAMLs, the presence of load coils, the presence of digital loop carrier, and loop wire gauge. See In re the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, NJBPU, Docket TX98010010, Summary Order, at 8 (Oct. 6, 1999) (attached hereto as Att. 3).

^{16/} If this charge is deemed appropriate by the NYPSC in the expedited DSL pricing proceeding, it makes no sense that this charge should be a monthly recurring charge. Instead, it should be a non-recurring charge, compensating BA-NY for the alleged costs associated with a CLEC dipping into the database one time.

BA-NY's Manual Loop Qualification will only provide a CLEC with: (1) the loop length including bridged taps, (2) the presence of load coils (yes or no), (3) the presence of a digital loop carrier (yes or no), and (4) whether or not the loop is ADSL/HDSL qualified (yes or no). See id. section 5.5.1.1(D).

14. Again, this information is woefully deficient. In fact, the only additional useful information that a CLEC will receive for \$62 is the identification of a digital loop carrier, and even this information is inadequate because it does not include whether or not spare facilities exist if in fact the customer is served by a digital loop carrier.^{17/} As stated above, CLECs need additional information, including the length of the loop excluding bridged taps, the location and number of bridged taps, the loop wire gauge, spectrum management information, and the presence of load coils, repeaters, DAMLs, and pair gain devices.

15. Since the Manual Loop Qualification will not provide a CLEC with the loop make-up information it needs, it inevitably will have to request that BA-NY conduct an Engineering Query. See id. section 5.5.4.1. Upon such a request, a BA-NY engineer will manually look at multiple sources^{18/} and provide the CLEC with four additional pieces of information: (1) loop length without bridged taps, (2) location and number of bridged taps and

^{17/} As mentioned earlier, BA-NY has agreed to rearrange the customer's service to either a copper pair or UDLC if the loop is served by IDLC. However, rearrangement onto UDLC does not resolve the technical issues for use with DSL technologies. Thus, CLECs must know whether or not alternate copper facilities exist. See Lacouture/Troy Decl. ¶ 83.

^{18/} One of these sources is a BA-NY internal mechanized database called LFACS, which contains much of the loop make-up information that CLECs need. BA-NY refuses to provide CLECs with electronic access to this database, or any direct access to this database, and is unwilling to transfer any of the data contained in the LFACS database to the mechanized loop qualification database.

load coils, (3) location of a digital loop carrier (still with no indication whether alternate copper facilities exist), and (4) cable gauge at specific locations. See id. section 5.5.1.1(D). BA-NY's charge for an Engineering Query is \$123.67 per loop, plus \$81 for the engineering costs associated with verifying facilities availability, writing the work order and preparing a special bill. See id. section 5.5.2.^{19/} Even with these charges, BA-NY still does not provide information relating to DAMLs, repeaters and pair gain devices.

16. Clearly, CLECs will need to utilize the Engineering Query option in virtually every instance to determine conclusively what types of DSL an individual loop can carry. Not surprisingly, a CLEC's reliance on this manual process significantly and unreasonably delays its provision of DSL services to its customers. Indeed, an Engineering Query takes three days for BA-NY to complete, at least during normal demand periods. See id. section 5.5.3.

17. In addition to the cumbersome and costly DSL loop pre-qualification procedures just described, BA-NY's DSL offering also includes high non-recurring charges to "condition" DSL loops. For example, BA-NY's tariffed non-recurring charge for removing one bridged tap from a loop is \$423.94, and \$945.39 for removing multiple bridged taps from a loop. Meanwhile, BA-NY's tariffed non-recurring charge for removing load coils from a loop up to 21,000 feet in length is \$1,466.85, and \$1,814.49 for removing load coils from a loop up to 27,000 feet in length. See id. section 5.5.2. These charges were unilaterally determined by BA-NY, and the NYPSC will not adopt permanent, cost-based DSL loop conditioning rates until later this year.

^{19/} Both charges always apply when a CLEC orders a "Digital Designed Loop" -- a loop that is not qualified for BA-NY's retail DSL offering.

18. In addition to charging for loop pre-qualification and loop conditioning, BA-NY also charges CLECs for ordering and provisioning DSL loops. For example, for a two-wire ADSL qualified loop of less than 18,000 feet in length in a suburban area outside of New York City, BA-NY could charge a CLEC:

- (1) \$0.61 per month to access the mechanized loop qualification database;
- (2) \$123.67 (one-time charge) for an Engineering Query;
- (3) \$81.00 (one-time charge) for engineering costs associated with verifying facilities availability, writing the work order and preparing the special bill generated as a result of construction;
- (4) \$945.39 (one-time charge) for removal of multiple bridged taps;
- (5) \$12.40 per month for the loop itself;
- (6) \$22.99 (one-time charge) for service order and service connection;
- (7) \$11.04 (one-time charge) if the mechanized interface is not used to place the order;
- (8) \$18.27 (one-time charge) if wiring is required in the Central Office;
- (9) \$224.58 (one-time charge) if the copper pairs must be swapped in order to support the requested service transmission parameters;^{20/} and
- (10) \$85.25 (one-time charge) if a technician must be physically dispatched.

See id. section 5.5.2.

19. Thus, a CLEC who orders a two-wire ADSL qualified loop of less than 18,000 feet in length in a suburban area outside of New York City could be charged by BA-NY \$1,519.19 in non-recurring charges, plus \$13.01 per month, for provisioning one DSL-capable loop.

20. Meanwhile, if a CLEC requires a loop of longer than 18,000 feet in length to provide DSL service to a customer, the total charges to a CLEC may exceed \$4,000 per loop. In addition to all of the charges listed above for the two-wire ADSL qualified loop of less than 18,000 feet in length, the loop may also require the removal of load coils (\$1,814.49 for loops

^{20/} BA-NY's tariff amendments do not make clear whether the pair swap charge also applies when a swap must be made from a digital loop carrier/fiber loop to an existing copper pair.

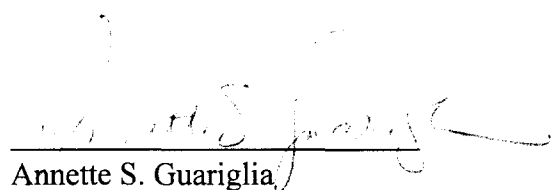
greater than 27,000 feet in length) and the addition of ISDN loop extension electronics

(\$1,019.21). See id. section 5.5.2.

21. A CLEC generally will be unable to recoup all these costs from the customer. Thus, with nearly 90 percent of present and future growth in the telecommunications industry expected to involve data traffic, BA-NY's discriminatory DSL offering is a significant barrier to competition in New York.

I declare, under penalty of perjury under the laws of the United States of America,
that the foregoing is true and correct to the best of my knowledge and belief.

Executed on October 10, 1999.


Annette S. Guariglia

**DECLARATION OF ANNETTE
GUARIGLIA**

ATTACHMENT 1

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 98-C-1357 - Proceeding on Motion of the Commission to
Examine New York Telephone Company's Rates for
Unbundled Network Elements

NOTICE INVITING COMMENTS ON
NON-RECURRING CHARGES FOR DSL LINKS

(Issued September 9, 1999)

On August 30, 1999, New York Telephone Company d/b/a Bell Atlantic-New York issued revisions to its P.S.C. No. 916 tariff to propose rates and regulations for digital two-wire links (ADSL and HDSL Qualified) and digital four-wire link (HDSL Qualified). The effective date of the tariff is September 14, 1999; however, the monthly rates and related non-recurring charges set forth for the above referenced digital links will be in effect on a temporary basis, subject to refund or reparations, pending the Commission's further review of the underlying costs.

The purpose of this Notice is to set forth an expedited procedure for the review of the non-recurring charges only and one recurring charge related to database query. The other monthly rates appear to implicate issues that do not lend themselves to expedited treatment, and they will be examined in the third module of this proceeding, where those issues are to be fully treated.

By not later than September 13, 1999, Bell Atlantic-New York is to submit information justifying the proposed non-recurring charges, including an analysis of the underlying costs and a demonstration of the rationale for imposing them. Fifteen copies should be submitted to the undersigned, and copies must be served in-hand on all active parties. All factual information in Bell Atlantic-New York's filing shall be submitted in the form of affidavits. Responses to Bell Atlantic-New York's filing, including comments on the terms and conditions of the tariff related to these non-recurring charges, should be submitted by September 23, 1999. Fifteen copies should be

submitted to the undersigned and copies must be served on all active parties. All factual information in those responses must be in the form of an affidavit. The Office of Hearings and Alternative Dispute Resolution will establish the subsequent procedures that may be warranted.

DEBRA RENNER
Acting Secretary

**DECLARATION OF ANNETTE
GUARIGLIA**

ATTACHMENT 2

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 98-C-1357 - Proceeding on Motion of the Commission to
Examine New York Telephone Company's Rates
for Unbundled Network Elements.

PROCEDURAL RULING CONCERNING DSL CHARGES

(Issued September 30, 1999)

JOEL A. LINSIDER, Administrative Law Judge:

In a notice issued September 9, 1999, the Commission set forth an expedited procedure for reviewing the non-recurring charges (and one recurring charge) proposed in a tariff filing by New York Telephone Company d/b/a Bell Atlantic-New York (Bell Atlantic-New York) for digital two-wire links (ADSL and HDSL Qualified) and digital four-wire links (HDSL Qualified). Consistent with that notice, Bell Atlantic-New York has submitted an affidavit seeking to justify the proposed charges, and several parties have responded. The notice provided that the Office of Hearings and Alternate Dispute Resolution would establish the subsequent procedures that might be warranted to complete the examination of the proposed rates.

Staff's and my preliminary review of the material submitted by the parties suggests a need for further record development, including an opportunity for discovery, as some parties have requested, and an evidentiary hearing. At the same time, the interest in pursuing the matter expeditiously (to avoid impeding the development of a competitive market with respect to these services), and the discrete and limited nature of the issues posed by the charges referred to in the Commission's notice, suggest that their review should not and need not be deferred all the way to Module 3 of this proceeding, now set to go to hearing in February 2000. Instead, the information needed to reach a decision can be developed on a separate track, targeted toward a Commission

decision by the end of this year.

To that end, discovery on the parties' affidavits may begin immediately. A single round of pre-filed testimony will be due on October 18, 1999, and a hearing will be held on November 3, 1999, followed by briefing.

Parties may incorporate their affidavits as exhibits to their pre-filed testimony if they wish. Affiants, of course, will be obligated to be available for cross-examination unless cross is waived by all other parties.

Finally, Bell Atlantic-New York is requested to submit, in advance of its pre-filed testimony, further supporting documentation with respect to its claimed costs. It should provide a description of the procedures required to perform each specific function (e.g. "remove bridged tap--one occurrence") taken into account in setting each of the proposed charges at issue here, identifying the specific work performed by each technician. This documentation should be submitted to me and to Staff within one week of the date of this ruling and served on any active party requesting it.

(SIGNED)

JOEL A. LINSIDER

**DECLARATION OF ANNETTE
GUARIGLIA**

ATTACHMENT 3



AGENDA DATE: 9/29/99

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF THE BOARD'S)
INVESTIGATION REGARDING THE)
STATUS OF LOCAL EXCHANGE)
COMPETITION IN NEW JERSEY)

SUMMARY ORDER

DOCKET NO. TX98010010

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Summary Order memorializes in summary fashion the action taken by the Board of Public Utilities (Board) at its September 29, 1999 public agenda meeting with respect to access to unbundled network elements. The Board will shortly issue a more detailed Order in this matter which fully sets forth discussion of the issues as well as the reasoning which underlies the Board's determinations.

I. BACKGROUND

On July 22, 1998, the Board issued in Docket No. TX98010010 its Report entitled "Status of Local Telephone Competition: Report and Action Plan" (the Report). The Board concluded in the Report there was no significant statewide "resale-based" or "facilities-based" local landline residential competition due to inadequate Operations Support Systems (OSS) and access to Unbundled Network Elements (UNEs). In order to address these issues, the Board in the Report's Action Plan created a Technical Solutions Facilitations Team (TSFT) to serve as an impartial forum for the resolution of certain generic issues, including OSS and access to UNEs, in a collaborative, efficient and effective manner. Report at 104. The Board also set a schedule for the determination of whether it had the legal authority to order combinations of UNEs (the so-called UNE Platform, or UNE-P). *Id.* at 101, 105. In addition, the Board directed the TSFT to attempt to negotiate the implementation of access to UNEs following the Board's determination of the jurisdictional issue, and advised that if no negotiated resolution is reached through the TSFT process, it would act to resolve the issue of access to UNEs shortly after the conclusion of TSFT discussions. *Id.* at 105. On October 22, 1998, the Board found it had the authority under State law to order the provision of UNEs, in combination, including the UNE-platform and directed the TSFT to commence negotiations to determine whether UNE-P, collocation or some other method or combination of methods should be implemented. Order, I/M/O

The Investigation Regarding Local Exchange Competition for Telecommunications Services, et al., Docket Nos. TX95120631 et al. (October 7, 1998). As a result, the Board referred to the TSFT the issues of how best to employ the various methods of access to UNEs in order to foster competition. The TSFT conducted several negotiation meetings from October 1998 through January 1999 to which no agreement could be reached. Failing an agreement on these issues, the Board directed the TSFT to bring a recommendation to the Board.

Following the TSFT negotiations referred to above, Staff proposed to the Board an interim resolution on the issue of access to UNEs at the Board's April 28, 1999 Agenda meeting. The Staff proposal was based on the earlier submissions of interested parties as well as positions of parties taken during TSFT negotiation sessions. The Staff proposal was released for comments by Secretary's Letter dated April 29, 1999.

In response to Staff's UNE-P recommendation, the following parties filed comments:

ACI Corporation (ACI);
Advantage New Jersey (ANJ);
AT&T Communications of New Jersey (AT&T);
Bell Atlantic-New Jersey (BA-NJ);
Cablevision Lightpath (Cablevision);
Citizens Action (CA);
Competitive Telecommunications Association (CompTel);
COVAD Communications Corporation (Covad);
LTC Consulting (LTC);
MCI Worldcom (MCI);
Ratepayer Advocate (RPA);
Sprint Communications Company LP (Sprint); and
Telecommunications Resellers Association (TRA).

II. SUMMARY OF POSITIONS

The Competitive Local Exchange Carriers (CLECs) generally argued that the Staff recommendation does not go far enough to "jump-start" local competition because of the numerous restrictions placed on the availability of UNE-P and Extended Loops. In support of their contention, they cited both the Act and the FCC's rules as not permitting the imposition of such restrictions. Moreover, several CLECs criticized the interim nature of the recommended proposal as introducing unnecessary uncertainty into the process. In addition, the CLECs averred that the recommended collocation rates are not sufficiently supported and are contrary to the FCC's First Report and Order and Further Notice of Proposed Rulemaking, I/M/O Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, FCC 99-48 (Released March 31, 1999) (hereinafter, Advanced Services Order). BA-NJ, on the other hand, commented that the recommendation will put it at a major competitive disadvantage and that statewide UNE-P for business accounts is unwarranted. BA-NJ asserted that the collocation options contained in the Staff proposal are a starting point but must be revised due to the FCC's Advanced Services Order.

III. SUMMARY OF STAFF MODIFICATIONS

In response to the comments, Staff recommended several modifications that will provide access to unbundled network elements consistent with the goal of the previous Staff recommendation and determinations of the Board, specifically to jump-start mass marketing to residential and small business customers.

- (1) Extend the availability of UNE-P to CLECs for the provision of Plain Old Telephone Service and BRI-ISDN services, without restrictions, to include business customers with two (2) and three (3) lines per location. When combined with the original recommendation for the availability of UNE-P for such services for residential and single line business customers, the platform is available to CLECs to serve customers who represent approximately 80% of the access lines in the state.
- (2) Modify the definition of "small business" customers from 2-10 lines, to 4-10 lines per location and to allow for review to ensure compliance;
- (3) The two (2) collocator exemption will be increased to three (3) collocators and will be further modified to include a grandfather clause for existing customers in the event a third collocator enters a central office after UNE-P is already provided;
- (4) The extended loop proposal is modified to require that BA-NJ provide essentially the same options as are available in New York, including concentration and fewer restrictions as requested by CLECs, and the definition is modified to comport with the FCC definition;
- (5) Clarifies and expands the requirements and information that BA-NJ must offer and/or provide to CLECs for advanced services;
- (6) Deletes references to glue charges;
- (7) Requires availability of UNE-P and extended loops 60 days after release of this order;
- (8) Includes clarification language;
- (9) Directs the TSFT to reconvene to attempt to resolve certain open collocation and advanced services issues; and
- (10) Directs BA-NJ to abide by all requirements in the FCC's Advanced Services Order and to follow the collocation prices required by the Board. In addition, product descriptions for UNE-P and extended loops and tariff and compliance filings for all requirements contained herein must be filed and will be effective on an interim basis subject to comments by interested parties, and full review by the Board.

Based upon the record in this matter, including comments received, the TSFT discussions and other submissions by the parties, the Board is satisfied that the Staff recommendation, as a whole, provides incentives needed to encourage CLECs to enter the local telephone market in New Jersey, will help jump-start competition to residential and small business customers and will eliminate access to unbundled elements as a barrier to such competition. Therefore, the Board **HEREBY ORDERS** the following:

UNE-Ps For CLECs

1. Not later than 60 days from the date of this order BA-NJ shall provide UNE-P to CLECs for Plain Old Telephone Service ("POTS") and BRI-ISDN services for residential customers.
2. Not later than 60 days from the date of this order BA-NJ shall provide UNE-P to CLECs for Plain Old Telephone Service ("POTS") and BRI-ISDN services for business customers with one (1), two (2), or three (3) lines per location.
3. Not later than 60 days from the date of this order and except as provided in Paragraph 9 below, BA-NJ shall provide UNE-P to CLECs for 4-10 lines per location small business customers for POTS and BRI-ISDN services. BA-NJ shall not be required to provide UNE-P to CLECs for Centrex, PBX, and PRI-ISDN. CLECs will be subject to review to ensure compliance with these line restrictions. If violations are found, the Board may impose fines as authorized by law.
4. BA-NJ shall not restrict the availability of UNE-P for Plain Old Telephone Service ("POTS") and BRI-ISDN services for all residential customers and for business customers with one (1), two (2), or three (3) lines per location.
5. BA-NJ shall continue to provide UNE-P and all other network element combinations required hereunder for all residential customers and business customers with one (1), two (2) or three (3) lines per location until the Board determines that one or more reasonable, nondiscriminatory, efficient, alternative means of network element combination is available.
6. For as long as collocation space is not available in a particular central office, BA-NJ shall provide UNE-P to CLECs for POTS and BRI-ISDN services for customers in that central office.
7. BA-NJ shall provide UNE-P to CLECs at least 90 days prior to BA-NJ's 271 filing with the FCC, but in no event later than 60 days from the date of this order.

8. Where fewer than three collocators are present in a central office, BA-NJ shall provide UNE-P to CLECs for business customers with 4-10 lines per location only as described in number 3 above. If three or more collocators are present in a central office, BA-NJ shall not be required to provide UNE-P to CLECs for business customers with 4-10 lines per location.
9. Once a UNE-P eligible central office reaches the three collocator threshold, BA-NJ must notify CLECs that they will only be able to continue to obtain UNE-P for business customers with 4-10 lines per location, subject to the provisions of paragraphs 3 and 8, for a six month transition period. Thereafter, existing UNE-P lines may be retained, but no new orders for UNE-P will be accepted.
10. UNE-P shall be available for all residential customers and business customers with one (1), two (2), or three (3) lines per location from every BA-NJ Central Office, regardless of whether collocators are present.
11. BA-NJ shall provide any combination of elements for all residential customers, business customers with one (1), two (2) or three (3) lines per location, and small business customers, as described in paragraph 3 above, to CLECs at the generic rates established in Docket No. TX95120631, except as otherwise provided herein.
12. BA-NJ shall continue to provide UNE-P and all other combinations of elements required herein until the Board determines that one or more reasonable non-discriminatory, efficient, alternative means of network element combination besides UNE-P is available.
13. Unless otherwise determined by the Board, a Board review shall commence four (4) years after the effective date of this Order to determine whether one or more reasonable non-discriminatory, efficient, alternative means of network element combination besides UNE-P is available.
14. BA-NJ shall file a product description of the platform offerings described herein including rates, no later than 30 days from the date of this Order, certified to be in conformance with this Order. Such filing shall become effective on an interim basis based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final approval by the Board.

**Access Fee Relief For CLECs Providing
Local Telephone Service Utilizing the Unbundled Network Element Platform**

15. Originating Access Fees shall not be charged by BA-NJ to a CLEC that is providing service on a Platform basis for the origination of toll services.
16. Terminating Access Fees shall not be charged by BA-NJ to a CLEC that is providing service on a Platform basis.

Collocation Arrangements For CLECs

17. BA-NJ shall provide collocation to CLECs, at a minimum, through the following methods: (1) all methods adopted or permitted by the FCC or approved by the Board; (2) SCOPE - Secured Collocation Open Physical Environment; (3) Shared Cages; (4) Smaller Cages; (5) Physical; (6) Virtual, and (7) Cageless collocation, with appropriate security measures as defined in the FCC's March 31, 1999 Order in CC Docket No. 98-147 (FCC 99-48).
18. Absent an agreement on rates for provisioning of collocation arrangements, collocation charges shall be flat rates. BA-NJ may require a non-refundable deposit of $\frac{1}{2}$ the flat rate with a six (6) month binding forecast and a two (2) year, non-binding estimated forecast in order to ensure provisioning of requested collocation arrangements in parity with the provisioning of other CLEC requests.
19. Absent an agreement on rates, on an interim basis and until further Board order, BA-NJ shall provide, at a minimum: (1) a single bay of up to 15 sq. ft. for \$5,250; (2) a SCOPE arrangement for \$5,900; (3) 25 sq. ft. cages for \$18,000; and (4) 100 sq. ft. cages for \$35,000. These rates approximate the average projected cost identified in the TSFT by BA-NJ to construct those facilities. In order to further spur deployment of CLEC collocation facilities, BA-NJ shall provide collocation in New Jersey at rates equal to the lowest comparable rate in the entire Bell Atlantic region for orders received with the required forecast and deposit. BA-NJ shall provide such rates for a period of nine (9) months after the offer was made in another part of the Bell Atlantic region.
20. Within seven (7) days of the date of this Order, BA-NJ is directed to file revisions to its currently pending Collocation Tariff (at Docket No. TT99050370) to reflect the minimum collocation arrangements set forth in Paragraph 17 and the interim rates set forth in Paragraph 19 above, certified that it is in conformance with this Order. This revised tariff shall become effective on an interim basis, based upon the certification of BA-NJ. The interim tariff shall be subject to comment by interested parties and further review and final approval by the Board. Such Board review shall ensure compliance with the Board's generic December 2, 1997 Order (at Docket No. TX95120631) and the FCC's Advanced Services Order (CC Docket No. 98-147).

Extended Loops For CLECs

21. Not later than 60 days from the date of this Order, BA-NJ shall provide extended loops¹ to CLECs throughout the BA-NJ service territory. BA-NJ shall

¹ "Extended loop" is defined herein to mean the combination of an unbundled loop, multiplexing/concentration equipment and unbundled transport.

not restrict the availability or use of extended loops except (A) for extended loops with unbundled loops of less than DS1 capacity, the requesting CLEC shall be required to collocate or share collocation with another CLEC in at least one BA-NJ central office in each LATA, and (B) for extended loops with unbundled loops of DS1 and DS3 capacity: (1) the requesting CLEC shall be required to collocate or share collocation with another CLEC in at least one BA-NJ central office in each LATA; (2) the requested extended loop must connect to a CLEC local switch or collocation facility and must be used primarily (greater than 50%) to transmit local exchange traffic; and (3) the extended loop shall not be used as a substitute for special access service, and an officer of the CLEC shall semi-annually certify that the provided extended loop is not being used as a substitute for special access.

22. BA-NJ shall provide concentration dedicated terminal equipment inside of its central office in a virtual collocation arrangement for CLECs who request it. The CLEC requesting concentration arrangements will be responsible for all installation and surveillance of the concentration facilities. The concentration arrangements described herein shall be dedicated to one CLEC.
23. BA-NJ shall file a product description of the extended loop offerings described herein, including rates, no later than 30 days from the date of this Order, certified to be in compliance with this Order. Such filing shall become effective on an interim basis, based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final approval by the Board.
24. BA-NJ shall provide extended loops to CLECs as required herein at least 90 days prior to BA-NJ's 271 filing with the FCC, but in any event no later than 60 days from the date of this Order.

Streamlined Access to Advanced Services Facilities For CLECs

25. BA-NJ shall make xDSL compatible unbundled loops available for CLEC services. These loops may only be used by CLECs to provide services that will not cause unreasonable interference in the network consistent with the provisions of law and applicable regulations. The TSFT shall be directed to continue to facilitate CLEC and ILEC negotiations in this regard and shall periodically report to the Board on any additional action steps that may be advisable.
26. BA-NJ shall make xDSL compatible loops available to a requesting CLEC at the generic rates previously set by the Board for 2-wire and 4-wire loops, as applicable, unless and until BA-NJ can make a showing, subject to comment by interested Parties, that the cost is different for such loops.
27. BA-NJ shall make available to CLECs information in an electronic format to allow CLECs to determine whether a given loop that is entered into the database

is qualified or could be qualified to provide advanced services. The database will be populated and made available to the CLECs in the following manner: as BA-NJ performs loop qualification evaluations for its own retail purposes, it will enter the results of that evaluation into the database for use by CLECs. For a specific loop, that data consists of the total metallic loop length, including bridged tap and a "yes/no" qualification indicator based on BA-NJ's technical specifications (hereinafter referred to as "Basic Data"). BA-NJ shall process such CLEC requests for qualification on a first-come-first-served basis, at parity with its own requests. BA-NJ shall develop a priority list of central office qualification priorities to be available in the pre-qualification database in consultation with the CLECs and the TSFT.

28. In addition to this Basic Data, which is currently made available through the existing ADSL loop pre-qualification database, no later than March 31, 2000, the database will be enhanced to be capable of providing the following additional information (hereinafter referred to as "Enhanced Data"): (1) the existence of T1 circuits in the same binder group; (2) the presence of a Digital Added Main Line (DAML) serving the customer location; (3) the presence of load coils; and (4) the presence of Digital Loop Carrier (DLC). Access to wire gauge must be provided through electronic means as well by means of a chart of standard loop design posted on the web site to allow CLECs to determine likely cable gauge based on loop length. Beginning no later than March 31, 2000, such Enhanced Data will be entered into the database pursuant to loop-by-loop requests by CLECs, to the extent that any such Enhanced Data is available from existing BA-NJ engineering records. In addition, if at any time BA-NJ uses Enhanced Data or any other available loop make-up information that is applicable to xDSL loop qualification for its own retail purposes, such data shall immediately be entered into the database and made available to CLECs. As BA-NJ provides manual loop qualification reviews, as described in Paragraph 29 below, all the individual loop characteristics data associated with the manual review, such as bridged taps, shall be loaded into the advanced services database at the time of the manual review.
29. In a central office for which data is not electronically available, the information shall be made available within three (3) business days, upon request, through a Local Service Request (LSR) or substantially similar process.
30. BA-NJ shall perform Basic Loop Conditioning within BA-NJ's currently established unbundled loop intervals. This follows the availability of loop qualification data (3 business days) and a CLEC request, where appropriate facilities exist and where Special Construction Loop Conditioning is not required. Basic Loop Conditioning, as used herein, refers to the removal of load coils and excessive bridged tap on loops less than 18k ft. Special Construction Loop Conditioning, as used herein, refers to the removal of load coils, the removal of bridged taps, and the addition of ISDN electronics on loops over 18k ft.

31. BA-NJ shall file a compliance filing for access to advanced services facilities, including rates for loop qualification and loop conditioning, and unbundled loop conditioning intervals, no later than 30 days from the date of this order, certified to be in compliance with this Order. Such filing shall become effective on an interim basis, based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final approval by the Board.
32. The comment period referenced in paragraphs 14, 20, 23 and 31 above is as follows: initial comments are due 20 business days from receipt of the filing and reply comments due 10 business days thereafter. BA-NJ shall provide simultaneous service to all parties on the attached service list, in the same manner as BA-NJ provides service to the Board.

COMPLIANCE FILING AND APPLICABILITY TO BA-NJ 271 RELIEF

On or before February 1, 2000 and on an ongoing basis as required by the Board, BA-NJ shall demonstrate to the Board through a compliance filing that each of the requirements contained herein and the provisions related to interconnection contained in the Board's Generic Order issued on December 2, 1997, have been met. BA-NJ shall be required to provide, at a minimum, UNE-P as described herein for residential, business customers with one (1), two (2) and three (3) lines per location, 4-10 line business customers, extended loops, concentration, xDSL capabilities and all other provisions as described in this Order. Should BA-NJ make a "271" relief application, BA-NJ shall demonstrate to the Board, through a compliance filing and subject to comment from all interested parties and Board review, that the requirements set forth herein and the requirements of any applicable FCC Order, have been met prior to the Board providing the FCC with verification of BA-NJ's compliance with checklist items related to access to network elements and interconnection. If the Board determines compliance, and network elements as then defined by the FCC are available to CLECs for all classes of customers, the checklist items concerning access to network elements and interconnection for purposes of BA-NJ's 271 filing, shall be deemed satisfied.

Local Transport Restructure

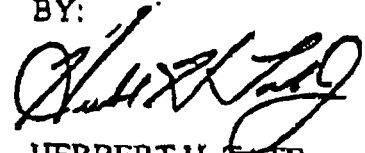
As a further pro-competitive measure, the Board **HEREBY DIRECTS** BA-NJ to implement a Local Transport Restructure for switched access service in New Jersey so as to provide for local transport access rates on a fixed per line basis. Although switched access rates in New Jersey are low, the implementation of a Local Transport Restructure will allow the carriers to benefit from the efficiencies of purchasing facilities for transport instead of paying on a per minute of use basis. This revised structure should limit the growth in access payments that has been accelerating commensurate with the IXC's success in the intraLATA market and thus create more certainty for IXCs with respect to the level of this access expense as we move forward into a more competitive marketplace. The restructure should be similar to the structure in the interstate jurisdiction and the structure adopted throughout the rest of the Bell Atlantic region, and should be revenue neutral to BA-NJ and should not adversely affect any customer class. Within 7 days of the date of this Order, BA-NJ is **DIRECTED** to file a tariff revision which complies with the local transport restructure requirements above, certified to be in compliance with this order. Such filing shall become effective on an interim basis on October 1,

1999, based upon the certification of BA-NJ. The filing shall be subject to comment by interested parties and final Board approval. The comment period and service requirements contained in paragraph 32 above are applicable to this tariff revision.

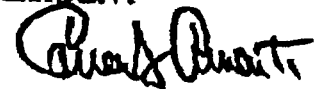
DATED:

OCTOBER 6, 1999

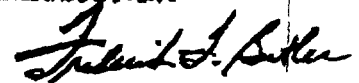
BOARD OF PUBLIC UTILITIES
BY:



HERBERT H. TATE
PRESIDENT

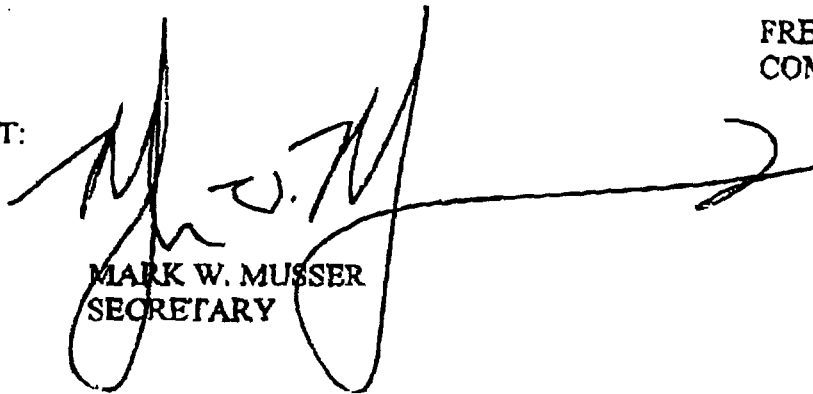


CARMEN J. ARMENTI
COMMISSIONER



FREDERICK F. BUTLER
COMMISSIONER

ATTEST:



MARK W. MUSSER
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

